



DEPARTMENT OF BUSINESS AND INDUSTRY
NEVADA TRANSPORTATION AUTHORITY

**MINUTES OF THE JANUARY 19, 2012
GENERAL SESSION OF THE AUTHORITY**

1. Call to Order

Chairman MacKay called the General Session to Order at approximately 9:35 a.m.

2. Roll Call

Present in Las Vegas: Chairman Andrew J. MacKay, Commissioner Monica B Metz, Administrative Attorney James Day, Applications Manager Liz Babcock, Financial Analyst Yvonne Shelton, Financial Analyst Lidia Aronova, Compliance Audit Investigator Rene Revens(on behalf of Chief of Enforcement Michael Bradford), Deputy Attorney General Christopher Eccles, and Senior Deputy Attorney General David Newton. Present in Reno: Deputy Commissioner Marilyn Skibinski.

3. Pledge of Allegiance

Senior Deputy Attorney General David Newton led a recital of the Pledge.

4. Public Comment:

None

5. Approval of Agenda

Administrative Attorney Jim Day requested that Items 22 and 33 be removed from the agenda. Applications Manager Liz Babcock requested that Item 28 be removed. Chairman MacKay noted the Appellant's request to table Item 15 to the next available general session. Approved 2-0 with noted items removed and Item 15 tabled.

6. Approval of the Minutes of the December 8, 2011 Agenda Meeting

Approved 2-0

7. Briefings from the Commissioners

Chairman MacKay described the report he had provided to the Governor's Office regarding obsolete and burdensome regulations. Chairman MacKay further noted that the Authority will pursue a regulation change to adopt the blanket exemption granted to airport transfer carriers with respect to signage requirements.

8. Briefing from the Deputy Commissioner

None

9. Report of Legal Counsel

Senior Deputy Attorney General Newton noted that the Supreme court settlement conference for the Handicab Appeal is scheduled for January 27, 2012.

Applications for Fully Regulated Carriers

10. Docket No. 09-01007 The Application of Omni Limousine, Inc. for an expansion of the operating authority granted under CPCN 1084, Sub 1. The Authority will address the recent court Order in this matter and may address Applicant's Motion for Temporary Increase in Fleet and Applicant's Motion for Re-hearing on Application. (MJK)

Chairman MacKay summarized the procedural history. James Kent, Esq., appeared on behalf of Omni Limousine. Mr. Kent asked that if consideration of his motions was delayed, that the implementation of the District Court Order also be delayed; argued that the merits and findings have not been questioned by the court and that the error in this matter was technical and procedural; argued that the District Court Order does not close the Application or the hearing; and requested a new hearing date and a temporary expansion. Mr. Kent requested that if the fleet is ordered reduced, the carrier be allowed to gradually reduce the fleet to 12. Neil Tomlinson, Esq., appeared on behalf of Intervenor/Appellant Las Vegas Limousine. He stated that Mr. Kent's arguments had already been made to the District Court and were rejected, the Court found the Application infirm, and a new application should be required. Senior Deputy Attorney General Newton clarified that the District Court did not find the Application infirm, that to take any action other than those set forth by the Judge in the Order would be counter to the District Court Order, and took no position otherwise. Chairman MacKay discussed the possibility of re-hearing/application process. Commissioner Metz stated for the record her disagreement with the findings of the Court Order regarding the authority granted under NRS 706.391(8).

Motion to adopt the District Court Order and to take actions as directed in the Order approved 2-0. Applicant's Certificate to be reissued with a fleet limitation of 12 and Applicant to reduce fleet size to 12 upon receipt of the Authority's written order.

Applicant's Request for Temporary Increase in Fleet denied 2-0.

Applicant's Motion for Rehearing approved 2-0, with Application to proceed through discovery and a new hearing with new evidence and testimony.

Mr. Kent requested additional leeway in the timing of the fleet reduction. Chairman MacKay stated he opposed the request based on the language of the District Court Order, so the motion could not prevail.

11. Docket No. 09-07009 The Application of Mike's Moving Service, LLC d/b/a 1st Class Relocation for a certificate of public convenience and necessity to provide transportation of household goods within the State of Nevada. Deputy Commissioner's Motion to Dismiss

Deputy Attorney General Christopher Eccles summarized the Motion and provided proof of service. Commissioner Metz noted that the Applicant, though properly noticed, was not present. Approved 2-0

12. Docket No. 09-12007 The Application of Viva Las Vegas Tour & Travel, Inc. for a permit to operate as a contract motor carrier of passengers within the State of Nevada. (AJM)

Chairman MacKay summarized the procedural history of a dispositive Motion made by the Intervenor in this matter. Kimberly Maxson-Rushton, Esq., appeared on behalf of Intervenor Pink Jeep Tours and presented the dispositive Motion, arguing that the Applicant's proposed operations do not qualify as a contract carrier, but rather as a common carrier and that the Application for contract carrier authority should be dismissed and/or amended to apply for common carrier authority. James Kent, Esq., appeared

on behalf of the Applicant and argued against the Motion. Chairman MacKay stated his belief that the Applicant qualifies for contract carrier authority based upon the Applicant being limited to only contract clients. Commissioner Metz concurred with Chairman MacKay's assessment. A discussion ensued with regard to common motor carrier vs. contract motor carrier with the Application at issue.

By a vote of 2-0, Intervenor's Motion was denied, resulting in the Application not being dismissed and not being construed as common carrier authority.

Chairman MacKay summarized the Application, stating that the Applicant met its burden of proof and noting that the current contracts do not meet the requirement that they be for a minimum duration of 3 months. He recommended approval of the Application with the added compliance item that the contracts include contract durations of at least 3 months.

Ms. Rushton requested that the Authority limit the Applicant to the current number of vehicles proposed—one per contract. Chairman MacKay and Commissioner Metz expressed opposition to the request.

Application granted 2-0, with additional compliance item as noted by Chairman MacKay.

13. Docket No. 10-10018 The Application of Limousines of LV Parking, LLC for a permit to operate as a contract motor carrier of passengers within the State of Nevada. (AJM)

Chairman MacKay summarized the Application. James Fontano, Esq., was present on behalf of the Applicant. Kimberly Maxson-Rushton, Esq., was present on behalf of the Intervenor. Mr. Fontano stated Melody Malone and Janet Leavitt hold 52% of Applicant LLC and none of the charter limo entity; the Applicant entity does not operate as a common carrier, it is a distinct entity; and there is a very high bar for piercing the corporate veil which is not met here. Ms. Rushton argued that the entities are too intertwined and that the Applicant is not eligible under NAC 706.232 to be a contract carrier because they would also operate as a common motor carrier. Chairman MacKay disagreed and stated his belief that the Applicant is a distinct legal entity; however, he expressed concern about the confusion between the names of the two entities. Melody Malone, Applicant's Manager, stated that the Applicant would be willing to adopt a d/b/a name that clearly differentiates. Ms. Rushton stated the Applicant could refer rides to the common carrier. Mrs. Malone described the proposed operations and addressed the strict adherence to contract service only. Further discussion ensued between the Mr. Fontano, Ms. Rushton, Ms. Malone, and Commissioners.

Application approved 2-0 with an additional compliance item to add a d/b/a name that clearly differentiates between the Applicant and the common carrier entity.

14. Docket No. 12-01002 The Application of Presidential Limousine, Inc. for an expansion of operating authority granted under CPCN 1007, Sub 3. Applicant requests interim/temporary approval of their application due to exigent circumstances. Staff investigation of request concluded. (MBM)

Jeffrey Silver, Esq., and Vice President J.J. Bell were present on behalf of the Applicant. Mr. Silver summarized the Request for interim/temporary authority. Mr. Bell stated that he has observed a lack of adequate service to the Las Vegas Motor Speedway. James Kent, Esq., on behalf of Omni Limousine was granted protestant status and stated that the standard adopted in this matter should be applied fairly to all future similarly situated applicants. Commissioner Metz stated the criteria she uses for requests of this type are: 1) is there another carrier willing and able to provide the requested service; and 2) are there exigent circumstances. In response to a question from Chairman MacKay, Mr. Silver stated that Bell Trans could provide the service. JJ Bell stated that the client insists on Presidential Limousine, not Bell Trans. Commissioner Metz stated that she did not find exigent circumstances. Mark James of Frias

Companies stated his opposition to the request based upon the opportunity to provide service at the upcoming NASCAR race. Mr. Silver amended request to specifically include service for Exotics Racing and to exclude the NASCAR event.

Request approved 2-0 for 6 months and limited to service related to Exotic Racing.

Appeal from Taxicab Authority Decision

15. Docket No. 11-09003 The Appeal by ITPE Local 4873 and USW Local 711-A, AFL-CIO from the Order of the Taxicab Authority dated August 26, 2011. (AJM)
This matter was tabled for consideration at the next subsequent general session.

Financial Rates and Tariffs

16. Docket No. 11-10018 The Application of Jacob Transportation Services, LLC d/b/a Executive Las Vegas for approval of a tariff rate modification for airport transfer service provided under CPCN 1062, Sub 6. Staff investigation concluded.

Financial Analyst Yvonne Shelton expressed staff support for the Application. Carole Jimmerson appeared on behalf of the Applicant. Approved 2-0.

17. Docket No. 11-11017 #3 The Application of Ashley Towing, Inc. d/b/a Ashley's Towing for approval of a tariff rate modification for tow car services conducted under CPCN 7220. Staff investigation concluded.

Applications Manager Liz Babcock expressed staff support for the Application. Shaun Davis and David Lewis appeared on behalf of the Applicant. Approved 2-0.

18. Docket No. 11-11017 #4 The Application of Baumbach Enterprises, LLC d/b/a Milne Towing for approval of a tariff rate modification for tow car services conducted under CPCN 8003, Sub 5. Staff investigation concluded.

Owner Tom Baumbach was present on behalf of the Applicant. Applications Manager Liz Babcock stated that Staff supports the Application. Mike Keller of AAA Insurance stated that the highest hourly charge is currently \$260, and this tariff would exceed that. Mr. Keller urged that tow carriers be required to substantiate their average time per tow. Ms. Babcock responded to a question from Susan Zinser of D&S Towing regarding maximum rates. John Rubins of AAA Insurance urged that the conversion to the model tariff not result in widespread rate increases. Approved 2-0.

19. Docket No. 12-01004 The Application of Tow Guys, Inc. d/b/a Tow Guys for approval of a tariff rate modification for services provided under CPCN 7108, Sub 3. Staff investigation concluded.

Clark Whitney appeared on behalf of Tow Guys. Staff expressed support for the Application. Commissioner Metz asked why the after-hours rate was the same as the lot visit rate. Clark Whitney explained the rationale. Approved 2-0.

Petition to Deviate from Regulation

20. Docket No. 11-12016 The Petition to Deviate from Regulations filed pursuant to NAC 706.1305 by Ashley's Towing, Inc. (CPCN 7220) seeking Authority approval to deviate from Sections (3)(1)(a) and (b) of NAC 706 as amended by LCB File No. R075-08. Specifically, the Petitioner seeks approval to utilize an electronic authorization rather than a traditional signature for tow authorizations.

Owner Shawn Davis and Manager David Lewis were present on behalf of the Petitioner. Mr. Davis summarized the Petition and described the electronic authorization system. Owner Yelena Protopopova of Titan Towing stated that she has experience with a similar electronic system and expressed her support for the request. Commissioner Metz stated that she is unwilling to approve anything less than a handwritten signature. Chairman MacKay concurred, noting that the NRS specifically addresses electronic signatures and that the authorization system as proposed does not meet the NRS requirements. Denied 2-0.

Petitions for Reconsideration

21. Docket No. 11-09017 The Petition of Martin-Ross & Associates for Reconsideration of the Authority's October 27, 2011 Order Denying Petition for Temporary Approval of Contract Motor Carrier Authority. (AJM)

No one was present on behalf of the Petitioner.

Petition denied 2-0.

22. Docket No. 11-07005 The Petition of Mike Haggerty to set aside the Authority's December 8, 2011 final Order granting the Joint Application of the Haggerty Family Trust to sell and transfer and of Century Park Capital Partners II, L.P. to purchase and acquire 100% of the common stock of Ryan's Holdings, Inc., the sole owner of Ryan's Express Transportation Services, Inc. d/b/a Ryan's Express, a carrier authorized to provide charter bus service in the State of Nevada under CPCN 3240, Sub 1. (AJM)

This item was removed from the meeting agenda prior to consideration.

Discussion Items

23. At the Authority's October 27, 2011 general session, David Walker of Walker Towing expressed concern as to the effect Senate Bill 142 would have on the towing industry with respect to the provision of the bill regarding release of a vehicle to the insurance company. Upon the recommendation of Senior Deputy Attorney General Newton, the Authority agreed to place this item on a future Agenda for discussion.

Items 23 and 24 were discussed together. See Item 24 for discussion.

24. At the Authority's December 8, 2011 general session, Mike Keller of AAA Insurance expressed concern as to the implementation of Senate Bill 142 by tow companies, specifically with respect to the language regarding the timing for assessing lien fees. Upon the recommendation of Commissioner Metz, the Authority agreed to place this item on a future Agenda for discussion.

Items 23 and 24 were discussed together. David Walker of Walker Towing, Clark Whitney of Tow Guys, John Rubins of AAA, and Mike Keller of AAA were present. A discussion ensued regarding the requirement of the written release document, verbal release requests, and the indemnification of the holding company upon release of the vehicle. Mr. Walker asked if tow carriers are required to use the DOI form when releasing a vehicle to an insurance company. Chairman MacKay stated SB 142 is now officially NRS 706.4481. A discussion ensued regarding the timing for assessing lien fees. Chairman MacKay described the legislative history of the "four business days" requirement and provided illustrative examples of the proper computation of the timeframe. SDAG Newton noted the definition of regular business hours set forth in NAC 706.1045.

Chairman MacKay agreed to contact the insurance commission with regard to the language contained in the bill for clarification.

Applications for Certificates of Public Convenience and Necessity to Provide Charter Bus Service

25. Docket No. 11-09009 The Application of R & R Charters, Inc. d/b/a R & R Charters for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded.

Applications Manager Liz Babcock summarized the Application and expressed staff support. Rovin Chavarria was present on behalf of the Applicant. Approved 2-0.

26. Docket No. 11-12007 The temporary discontinuance from December 2, 2011 through June 2, 2012 of services provided by Vegas Con Xpress and Wear, LLC d/b/a Las Vegas Con Xpress under CPCN 2139. Staff investigation concluded.

Approved 2-0.

Applications for Certificates of Public Convenience and Necessity to Provide Tow Car Service

27. Docket No. 11-10009 The Application of B & B Towing, LLC for a certificate of public convenience and necessity to provide tow car service by tow car vehicle within the State of Nevada. Staff investigation concluded.

Applications Manager Liz Babcock indicated staff support. Approved 2-0.

28. Docket No. 11-06018 The temporary discontinuance from June 24, 2011 through December 24, 2011 of services provided by Terrence Brill d/b/a T-Ray's Towing under CPCN 7201. Staff investigation concluded.

Pulled from meeting agenda prior to consideration.

Administrative Citations and Impoundments

Items 29 through 32 and 34 through 66 were considered collectively. Approved 2-0.

29. Citation 14179 issued to Kenan Cicek for a violation of NAC 706.376. (AJM)

30. Citation 14221 issued to Cal-Neva Transport & Tow, Inc. for a violation of NAC 706.247/49CFR 382.305. (AJM)

31. Citation 15317 issued to Carlos Alberto Izaguirre for violations of NRS 706.386 and NRS 706.758. (MJK)

32. Citation 15320 issued to Tow Guys, Inc. for violations of NAC 706.311 (2 counts) and NAC 706 as amended by LCB File No. R075-08. (MJK)

33. Citation 15521 issued to Tow Guys, Inc. for violations of NAC 706.311 and NAC 706 as amended by LCB File No. R075-08. (MJK)

Pulled from meeting agenda for consideration at a future date.

34. Citation 15599 issued to Silver State Towing for a violation of NAC 706.247. (MJK)

35. Citation 15634 issued to Silver State Towing for a violation of NRS 706.4477. (MJK)

36. Citation 15647 issued to Shaun Young for violations of NRS 706.386 and NRS 706.758. (MJK)

- 37. Impound 1769** The impoundment pursuant to NRS 706.476 of a vehicle registered to Maria Alvarado. (MJK)
- 38. Impound 1935** The impoundment pursuant to NRS 706.476 of a vehicle registered to Robert Arnold Pennington III. (MJK)
- 39. Impound 1941** The impoundment pursuant to NRS 706.476 of a vehicle registered to Victor Manuel Estrada. (MJK)
- 40. Impound 1943** The impoundment pursuant to NRS 706.476 of a vehicle registered to Jennifer Monroe. (MJK)
- 41. Impound 1896 and Citation 15641** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15641 issued to Quincy Alan Jones for violations of NRS 706.386 and NRS 706.758. (MJK)
- 42. Impound 1928 and Citation 15636** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15636 issued to Wendall Smith for violations of NRS 706.386 and NRS 706.758. (MJK)
- 43. Citation 15558** issued to Thriftee Tow, Inc. for violations of NAC 706.247/49 CFR 382.305(a) and NAC 706.247/49 CFR 391.25(a)(b) (2 counts). (MBM)
- 44. Citation 15559** issued to CLS Nevada, LLC d/b/a CLS Transportation for violation of NAC 706.381 (10 counts). (MBM)
- 45. Citation 15626** issued to Carlos Herrera for violations of NRS 706.386 and NRS 706.758. (MBM) –
- 46. Citations 15651, 15652 and 15653** issued to Ashley’s Towing, Inc. for violations of NAC 706.247/49 CFR 40.25 (4 counts), NAC 706.247/49 CFR 382.301(a) (3 counts), NAC 706.247/49 CFR 391.25(b) (2 counts), NAC 706.247/49 CFR 391.27(b) (4 counts), NAC 706.247/49 CFR 391.41(a)(1)(i) (2 counts) and NAC 706.247/49 CFR 396.3(b) (3 counts). (MBM)
- 47. Citation 15654** issued to Amigos Auto Repair & Towing, Inc. for violations of NAC 706.247/49 CFR 391.41(a)(1)(i) (2 counts). (MBM)
- 48. Impound 1765** The impoundment pursuant to NRS 706.476 of a vehicle registered to CPL Movers. (MBM)
- 49. Impound 1923** The impoundment pursuant to NRS 706.476 of a vehicle registered to Stuart M. Horowitz. (MBM)
- 50. Impound 1921 and Citation 15633** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15633 issued to Richard Scott Jackson for violations of NRS 706.386 and NRS 706.758. (MBM)
- 51. Impound 1924 and Citation 15632** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15632 issued to Jorge Maticorena for violations of NRS 706.386 and NRS 706.758. (MBM)

- 52. Impound 1925 and Citation 15630** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15630 issued to Carlos Lopez for violations of NRS 706.386 and NRS 706.758. (MBM)
- 53. Impound 1927 and Citation 15635** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 15635 issued to Gary Ayers, Jr. for violations of NRS 706.386 and NRS 706.758. (MBM)
- 54. Citation 15473** issued to Yalem Asefa Gedion for violations of NAC 706 as amended by LCB File No. R127-07(1), NAC 706.228(3) as amended by LCB File No. R127-07, and NAC 706.228(5) as amended by LCB File No. R127-07.
- 55. Citation 15517 and 15518** issued to Silver State Towing, Inc. for violations of NRS 706.4477, NAC 706.427, NAC 706.418 and NRS 706.398.
- 56. Citation 15520** issued to Drew Christopher Potts and/or “Move U Right” for violations of NRS 706.386 and NRS 706.758.
- 57. Citation 15611** issued to Jacob Transportation Services, LLC for a violation of NAC 706.228(3) as amended by LCB File No. R127-07.
- 58. Citation 15612** issued to Bell Trans for a violation of NAC 706.228(3) as amended by LCB File No. R127-07.
- 59. Citation 15616** issued to A A Action Towing, Inc. for a violation of NAC 706.418.
- 60. Citation 15613** issued to CLS of Nevada, LLC for a violation of NAC 706.228(3) as amended by LCB File No. R127-07.
- 61. Citation 15617** issued to John Andrew Ritz for a violation of NAC 706.247/49 CFR 393.71.
- 62. Citation 15618** issued to Nickolay Assenov Stoyanov for a violation of NAC 706.247/49 CFR 391.41. –
- 63. Citation 15628 and 15629** issued to ODS for violations of NAC 706.228(3) as amended by LCB File No. R127-07.
- 64. Citation 15642** issued to Asfaw Taglo for a violation of NAC 706.228.
- 65. Citation 15645** issued to David Ben-Yair for a violation of NAC 706.228.
- 66. Citation 15643** issued to Aleksandar Petrovic for a violation of NAC 706.228.

67. Public Comment

None

68. Adjournment

Chairman MacKay adjourned the meeting at 3:58 p.m.